



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-1127]

RIN 1625- AA00

Safety Zone; 2016 Wings over Vermont Air Show, Lake Champlain, Burlington, VT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for an aerobatic demonstration over the navigable waters of Lake Champlain along the shoreline in Burlington, VT. This temporary safety zone will be necessary to protect spectators and vessels from hazards associated with the air show. Entry into, transit through, mooring or anchoring within this regulated area will be prohibited unless authorized by the Captain of the Port (COTP) Sector Northern New England (SNNE). We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-1127 using the Federal eRulemaking Portal <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or e-mail Chief Marine Science Technician Chris Bains, Waterways Management Division at Coast Guard Sector Northern New England, telephone (207) 347-5003, or e-mail Chris.D.Bains@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On December 24, 2015, the Vermont National Guard notified the Coast Guard that they will be holding the 2016 Wings over Vermont Air Show on Lake Champlain along the shoreline of Burlington, VT from August 12, 2016 through August 14, 2016. The aeronautical box designed for the performers will measure 12,000 feet long and 4,770 feet wide and will be approximately 1,100 feet from shoreline. On water viewing locations will be placed both east and west of the air show box to control vessel traffic during the demonstration. Lake Champlain Transportation Company will redirect the ferry route around the aeronautical box so not to disrupt the safety zone during the enforcement period.

The purpose of this rulemaking is to ensure the safety of the spectator vessels and other traffic using the navigable waters near or around the designated aeronautical box. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

**III. Discussion of Proposed Rule**

The COTP proposes to establish a safety zone for the Wings over Vermont Air Show from 9 a.m to 6 p.m. on August 12- 14, 2016 on Lake Champlain, along the shoreline of Burlington, VT. The safety zone would cover all navigable waters within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44° 29'24"N / 073° 14'44"W; 44° 29'24"N / 073° 14'03"W; 44° 28'56"N / 073° 14'03"W; 44° 28'50"N / 073° 13'48"W; 44° 28'12"N / 073° 13'33"W; 44° 27'47"N / 073° 14'03"W; 44° 27'25"N / 073° 14'03"W; 44° 27'25"N / 073° 14'44"W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 a.m. to 5 p.m. aerobatic displays. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: the safety zone will be of limited duration and will only be in effect during a portion of three days, it will allow vessels to transit in waters directly adjacent to the safety zone, and coordinated efforts have been made to direct the ferry traffic around the safety zone so not to disrupt service on Lake Champlain. Additionally, maritime advisories will be posted in the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine Channel 16 prior to and during the entire duration of the enforcement period.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of

1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under the Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting a portion of three days and would prohibit entry into without permission from the COTP. Normally such actions are categorically excluded from further review under paragraph 34 of figure 2-1 of Commandant Instruction M16475.1D. A preliminary environmental analysis checklist supporting this is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-1127 to read as follows:

**§165.T01-1127 SAFETY ZONE; 2016 WINGS OVER VERMONT AIR SHOW, LAKE CHAMPLAIN; BURLINGTON, VT**

(a) **Location.** The following area is a Safety Zone: All navigable waters, from surface to bottom, of Lake Champlain, Burlington, VT, within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44° 29'24"N / 073° 14'44"W; 44° 29'24"N / 073° 14'03"W; 44° 28'56"N / 073° 14'03"W; 44° 28'50"N / 073° 13'48"W; 44° 28'12"N / 073° 13'33"W; 44° 27'47"N / 073° 14'03"W; 44° 27'25"N / 073° 14'03"W; 44° 27'25"N / 073° 14'44"W

(b) **Effective and enforcement period.** This rule would be effective and would be enforced with actual notice from 9 a.m until 6 p.m. on August 12-14, 2016.

(c) **Regulations.** (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.



(3) Persons and vessels may request permission to enter the safety zone by contacting the COTP or the COTP's designated representative on VHF-16 or via phone at 207-767-0303.

(4) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

Dated: March 16, 2016

M. A. Baroody  
Captain, U. S. Coast Guard  
Captain of the Port  
Sector Northern New England

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